

**CALIFORNIA CODE OF REGULATIONS
TITLE 3 – FOOD AND AGRICULTURAL CODE**

Chapter 3. Milk Stabilization and Marketing of Milk and Dairy Products

Subchapter 1. Unlawful Practices in Marketing Milk and Dairy Products

Article 1. General Provisions

1804. Violations by Agent, Employee, Representative, Subsidiaries, Affiliates.

No handler, manufacturer, distributor, producer, wholesale customer including any producer-distributor or non-profit cooperative association acting as a handler or distributor, or consumer shall violate any of the provisions of this subchapter, directly or indirectly, or through an employee, representative or other agent, or through a subsidiary or affiliated company or corporation. For the purposes of this subchapter, “subsidiary or affiliated company or corporation” includes, but is not limited to, companies or corporations controlled by a handler, manufacturer, distributor, producer, wholesale customer or consumer, directly or indirectly, through ownership of issued capital stock, partnership interests, membership interests, or otherwise. ▲

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Authority: Sections 407 and 61341, Food and Agricultural Code (FAC)

Reference: Section 61391, FAC

1806. Confidentiality of Records and Reports.

Proprietary financial information reported by any person subject to the provisions of this Chapter and, any information obtained in the course of an investigation or audit is subject to the confidentiality provisions of Section 61443 of the Code.▼

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Authority: Sections 407 and 61341, FAC

Reference: Section 61443, FAC

1808. Applicability of Unlawful Practices.

The provisions of this subchapter shall apply to any handler, manufacturer, distributor, producer, wholesale customer including any producer-distributor or non-profit cooperative association acting as a handler or distributor, or consumer or any representative of them, that solicits, or colludes with, or jointly participates with, any other person to commit any of the unlawful practices provided for in this subchapter, or that uses any misrepresentation, threat, intimidation, or boycott to effectuate the commission of such unlawful practices. Any provision of this subchapter that applies to

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a distributor shall apply equally to a wholesale customer that buys packaged milk, cream, or any dairy product for resale to other wholesale customers.

Authority: Sections 407 and 61341, FAC

Reference: Section 61391, FAC

1809. Meaning of Distributor.

A person who regularly operates mobile vehicles on routes to accomplish the sales of any items shall be deemed a "distributor" for the purposes of Section 61306(a)(2) of the Code, if 51 percent or more of such sales involve the sales of dairy products.

Deleted: Unless the context otherwise expressly indicates, the term "distributor" as used in this Subchapter 3 shall include a "manufacturer" of dairy products.

Authority: Sections 407 and 61341, FAC

Reference: Section 61306, FAC

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1811. Cost Components of Dairy Processing - Manufacturers, Distributors and Handlers.

(a) In determining whether a manufacturer, distributor, or handler sold milk, cream, or any other dairy product(s) below cost, the Department shall evaluate the total consideration paid or exchanged for the raw product and the total expenses incurred and allocated for manufacturing, processing, handling, sale, and delivery.

(1) Milk processing and distributing costs shall be calculated using cost element categories which include, but which are not limited to, those specified below. All costs and expenses incurred, and any non-cash or other value received or given must be included in cost calculations. The following provide guidelines for classification and are not intended to be a listing that is inclusive or finite.

(A) Ingredient Cost. Procurement of raw milk and other ingredients including, but not limited to additives and flavorings, premiums, service charges, federal, state, or local assessments.

(B) Labor Costs. All salaries, wages, benefits, and other compensation for workers and staff.

(C) Packaging Costs. All costs for purchasing packaging materials and for packaging products for sale.

(D) Shipping and Freight/Transportation/Storage Expense. All costs related to storing and transporting products.

(E) Waste, Shrinkage, Spoilage. All costs or values related to ingredient and finished product waste, shrinkage, spoilage.

(F) Manufacturing and Administrative Costs. All fixed and variable costs directly related to processing, manufacturing, sales and distribution of products, and associated administrative activities. For handlers, manufacturers, and distributors with more than one product line, costs should be allocated to each line using an allocation method that is both consistently applied and which is consistent with Generally Accepted Accounting Principles (an "Appropriate Accounting Method").

Deleted: 1810. Purpose of Regulations.

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The purposes of the regulations in this Group include, but are not limited to, the following:¶

(a) To assist the director in maintaining an orderly and stable market for milk and dairy products in the State of California by discouraging sudden market fluctuations in milk and dairy product prices which may disrupt established business relationships and jeopardize the ability of distributors to pay for market milk purchased from producers.¶

(b) To assist the director in discouraging the formation of monopolies in the distribution and marketing of milk and dairy products by preventing discriminatory practices designed to force competitors out of business. ¶

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Authority: Sections 407 and 61341, Food and Agricultural Code¶

Reference: Section 61341, Food and Agricultural Code¶

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1. Fixed Costs. Land and property expenses, property taxes, financing, leases, insurance, and other costs that are commonly considered fixed.

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2. Variable Costs. Plant expenses incurred to manufacture or produce product lines, including maintenance and testing of plant and equipment, non-capitalized furniture and fixtures, supplies, utilities, taxes, and other costs that are commonly considered variable.

(G) Asset Charges. Costs related to capital equipment and assets including depreciation, amortization, and capital repairs.

(2) Allocation methods selected for distributing costs must be fair, consistent with Generally Accepted Accounting Principles, and consistently applied.

(b) Other Costs. Handlers, manufacturers and distributors must capture all other costs, benefits or value resulting from activities which are directly related to sales of dairy products regulated by this subchapter ("Other Costs"). These Other Costs include, but are not limited to, promotions, advertising, coupons, slotting allowances, sweepstakes, or any other sales promotions or incentives, as well as the following:

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(1) Low interest loans. For any low interest loan provided to or guaranteed on behalf of a customer, the handler, manufacturer or distributor must recognize as a cost the value of the portion of the interest rate that is below market, the value of any terms that are more favorable than commercially available, or the value of the guarantee afforded.

(2) Discounts or rebates on non-dairy items. For any products other than regulated dairy products that are sold at a discount greater than that afforded to other customers or when non-dairy products are given free of charge to a customer as a direct or indirect part of the sale of a dairy product, the value of the discount or of the free product must be captured and included in the cost calculations.

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(3) Payments made on behalf of the Customer. Any payments or debts forgiven on behalf of a customer as a direct or indirect consequence of a dairy product must be captured and included in the cost calculations.

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(4) Equipment. For any equipment given or loaned to a customer without a related rental fee, the manufacturer or distributor must capture and include in its costs the value of the gifted equipment or the value of the rental payments foregone.

(5) Advertising and Promotions. For any advertising campaign, promotion, giveaway, coupons, or other incentives, the costs related to that campaign must be recognized as a cost following the provisions established in Article 3 of this subchapter.

(6) Gifts, Prizes, Sales Awards. The value of any gifts, prizes, sales awards, vacations, trips, gift certificates, cash or items of property given to any customer as a direct or indirect consequence of a sale of a dairy product must be included in the cost calculations.

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(7) Expenses Foregone. The value of any expenses foregone in connection with the sale of any dairy product must be included in the cost calculations.

(8) Special or Prepaid Account. Any transfer of anything of value in connection with the sale of any dairy product, including special accounts or funds used to reduce the invoice cost of a dairy product must be included in the cost calculations.

(c) Retention of Data. Handlers, manufacturers, and distributors are responsible for retaining sufficient records to demonstrate compliance with the statute and this subchapter.

Authority: Sections 407 and 61341, FAC

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Reference: Section 61382, 61383, 61384, 61441, 61442, 61443, FAC

1812. Cost Components of Dairy Processing - Wholesale Customers.

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In determining whether any wholesale customer sold milk, cream, or any other dairy product below cost, the Department shall evaluate the total consideration paid or exchanged for the processed dairy product as reflected on such wholesale customer's invoice, or the expense of replacement, whichever is lower, plus that wholesale customer's Cost of Doing Business. For the purposes of this subchapter, the term "Cost of Doing Business" shall include all costs and expenses related to the wholesale customer's total operation including, but not limited to the following:

(a) Discounts or rebates on non-dairy items. For any products other than regulated dairy products that are sold at a discount greater than that afforded to other customers, or when such products are given free of charge to a customer as a direct or indirect part of the sale of dairy product(s), the value of the discount or of the free product must be captured and included in the cost calculations.

(b) Gifts, Prizes, Sales Awards. The value of any gift, prize, sales award, vacation, trip, gift certificate, cash, or any other item of property given to any customer as a direct or indirect consequence of a sale of a dairy product must be included in the cost calculations.

(c) Advertising and Promotions. For any advertising campaign, promotion, giveaway, coupon, or other incentives, the costs related to that campaign must be recognized as a cost following the provisions of Article 3 of this subchapter.

Costs that directly or indirectly result from activities within a specific region or activity shall be allocated to the dairy product sold or distributed in that region or throughout that activity.

Authority: Sections 407 and 61341, FAC

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Reference: Section 61382, 61383, 61384, 61441, 61442, 61443, FAC

Article 2. Record Keeping Requirements

1831. Record Keeping Requirements.

(a) Every distributor shall maintain for the ~~Secretary's~~ inspection and copying, written price schedules which set forth the prices at which each distributor is selling, offering, or agreeing to sell to distributors or wholesale customers, any dairy product, and any product sold in conjunction with any dairy product. Such written price schedules shall be maintained and kept for a period of three years from their initial recordation or for a period of three years from their expiration date, whichever period is longer.

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(b) Every distributor in maintaining written price schedules shall do all of the following:

- (1) Clearly state the effective date of each price schedule.
- (2) Define the geographic area in which each price schedule is effective

Deleted: classified as Class 1 of Class 2; any frozen product or frozen product mix manufactured in a milk products plant; butter, American or cheddar cheese; Monterey jack cheese; pasteurized process cheese, and any filled milk product or any imitation milk product in which the use of market milk or any component of market milk is required by section 38925 of the Code

(c) Every distributor shall maintain such other records as are required by Section 61441 of the Code.

Authority: Sections 407 and 61341, FAC
Reference: Section 61441, 61442, 61443, FAC

Article 3. Advertising and Sales Promotion

1850. Determining and Allocating Costs.

Deleted: Reference to Wholesale Customer

Handlers, manufacturers, distributors, including any producer-distributor or non-profit cooperative association acting as a distributor, and wholesale customers must capture costs related to or resulting from all incentives, advertisements, marketing, sweepstakes, coupons, or any other activity intended to promote sales of dairy products. Such costs include expenses incurred and any and all value derived, gained, or realized.

(a) Advertising, Incentives and Sales Promotions. Any person engaging in any activity regulated by this section must define the benefit period of each sales or advertising campaign that is directly a cost of selling the involved dairy product (the "Defined Benefit Period"). For the purposes of calculating the cost of the involved dairy product, all advertising and sales costs must be allocated to each of the affected products over the applicable Defined Benefit Period. Actual or imputed costs for slotting allowances, exclusive agreements or other related agreements and activities shall be determined and allocated over the appropriate Defined Benefit Period.

(b) Sweepstakes, Drawings, Instant Prizes, and Other Such Sales Campaigns. Any person conducting any such activity shall estimate the approximate costs of the awards actually distributed to winners and allocate them over the Defined Benefit Period. The costs of actual redemption shall be determined, and estimated costs shall be adjusted to reflect actual costs incurred over the Defined Benefit Period.

(c) Coupons. Any person issuing a coupon shall estimate the value of the expected redemption of the coupon and allocate that value over a Defined Benefit Period. Estimated costs shall be adjusted to reflect actual coupon redemption during that Defined Benefit Period.

(d) Compliance with Section. If, upon determination of the actual costs of any activity regulated by this Section 1850, a handler, manufacturer, distributor, or wholesale customer experiences an actual redemption rate for that activity which results in an otherwise prohibited sale below cost, but that handler, manufacturer, distributor or wholesale customer can demonstrate that its estimates of the approximate cost of the redemption made according to the preceding provisions of this Section were made in good faith, and according to Generally Accepted Accounting Principles, and projected sales above its cost, that handler, manufacturer, distributor or wholesale customer shall be deemed to have complied with the Code and this Subchapter.

Authority: Sections 407 and 61341, FAC
Reference: Section 61382, 61383, 61384, 61441, 61442, 61443, FAC

Deleted: 1851. Wholesale Customer Advertising.¶

¶ Except as permitted by this article no distributor shall participate in any advertising by or for any wholesale customer, if the distributor bears any part of the advertising costs of the wholesale customer.¶

¶ Authority: Sections 407 and 61341, FAC¶
Reference: Section 61378, FAC

Article 4. Gifts and Free Services

1930. Definitions

Unless the context otherwise requires, the following definitions shall govern the construction of this Chapter 3.

(a) "Meeting Competition" means meeting a lawful competitive price.

(b) "Geographic Marketing Area" means one of the following two regions of counties: the Northern California geographic marketing area shall be composed of the counties of Monterey, Kings, Kern, Inyo and all counties north to the Oregon border. The Southern California geographic marketing area shall be composed of the counties of San Luis Obispo, Ventura, Los Angeles, and San Bernardino and all counties south to the Mexican Border.

(c) "Multi-Unit Price" is defined as the total price paid for two or more units or packages of any dairy product.

Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Section 61384, Food and Agricultural Code

1931. Meeting Competition - Retail Sales by Wholesale Customers.

Wholesale customers may meet a lawful competitive price of dairy products of similar defined composition or standard only within the same geographic marketing area. It shall be lawful to meet a competitive price subject to the following provisions:

(a) A price offered by the wholesale customer to meet a competitor's lawful price may be offered only while competitor's price is effective and may not be lower than such competitor's price;

(b) A lawful competitive price may be met whether or not that price results in a below cost sale by the wholesale customer; and;

(c) When a wholesale customer seeks to meet a competitor's price for dairy products that differ in ingredients or composition, that wholesale customer may do so only by offering products of similar composition or similar ingredients.

Authority: Sections 407 and 61341, Food and Agricultural Code

Deleted: 1851.1 Permissible Advertising Allowance.

A distributor may give an advertising allowance on any dairy product classified as Class 2., Class 3, Class 4a, or Class 4b, yogurts, soft fresh cheese (fromage frais), and flavored milks. Advertising allowances on flavored milks may be given until January 1, 1992. Any such advertising allowance shall be subject to the following provisions:

(a) The distributor offering such advertising allowance shall maintain records that identify the manner in which the offer is made, the particular dairy product on which the allowance is offered, the particular dairy product on which the allowance is offered, the particular period during which the allowance is available, the terms and conditions under which a wholesale customer may qualify for the allowance and the method used to determine the appropriate allowance paid to each individual wholesale customer.

(b) The distributor shall offer su... [1]

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Reference: Sections 61374, 61383... [3]

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Reference: Section 61382, 61383, and 61384, Food and Agricultural Code

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1932. Meeting Competition - "Multi-Unit Price"

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(a) A lawful multi-unit price may be met by a wholesale customer by dividing the number of units sold together to arrive at an individual unit price.

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EXAMPLE: A wholesale customer's lawful multi-unit price for two one-gallon milk containers is priced at \$4.20. Another wholesale customer may meet competition by dividing the multi-unit price by two and lawfully sell a one-gallon unit for \$2.10 (\$4.20 divided by 2 = \$2.10). When the number to be divided is an odd number, the result shall be rounded up.

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(b) It is unlawful to divide the weight or volume of a dairy product in a single container to arrive at a per-unit price for the purpose of meeting competition.

EXAMPLE: The price of a five-gallon tub of butter may not be divided by five to arrive at a one-pound unit price.

Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Sections 61382, 61383, 61384, Food and Agricultural Code

Article 5. Terms and Conditions, Price Differences and Meeting Competition

The only change to regulation text in this Article is to change "director" to "Secretary" wherever it appears.

The other changes are to request repeal of Reference sections, which have been repealed in the FAC, and to add relevant sections of the FAC.

1940. Terms and Conditions.

Reference: Section 61441, Food and Agricultural Code.

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1941. Price Discrimination.

Reference: Sections 61382, 61383, and 61384, Food and Agricultural Code.

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1942. Permissible Price Variations in Distributor's Price Schedules.

Repeal reference in (b)(2) to section 61377

Reference: Sections 61382, 61383, and 61384, Food and Agricultural Code.

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1943. Prices Offered to Meet Competition Generally.

Reference: Section 61384, Food and Agricultural Code.

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1944. Prices Offered to Meet Competition at a Particular Location.

Reference: Section 61384, Food and Agricultural Code.

1945. Records to Be Kept as to Price Variation to Meet Competition at a Particular Location.

In (c), change two references to "director" to "Secretary."

Reference: Sections 61384, 61441, and 61442, Food and Agricultural Code

1946. Burden of Proof.

Change two references to "director" to "Secretary."

Article 6. Generally Acceptable Cost Accounting Procedures--Sales by Distributors

1950. Records to Be Kept

Each distributor, manufacturer, and wholesale customer shall maintain a record of prices at which such distributor, manufacturer, and wholesale customer is selling, offering or agreeing to sell fluid milk and dairy products, and current cost records to reflect costs under the accounting procedures, required by Section 61384 of the Code and as amplified by the provisions of this subchapter.

For purposes of uniform and impartial enforcement of the "sales below cost" standards contained in Article 4 of the Code, any distributor, manufacturer, and wholesale customer, upon written demand by the Secretary and within 48 hours after receipt of such demand, shall submit in writing to the Secretary cost data developed in compliance with the requirements of Article 4 of the Code and this subchapter in respect to a particular price on one or more dairy products.

Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Sections 61384, 61441 and 61442, Food and Agricultural Code

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In respect to sales by processing distributors of milk, cream or dairy products, the cost of raw product, plus all costs of manufacturing, processing, handling, sale and delivery, including overhead costs within each distribution cost center (as "distribution cost center" is defined in subsection (c) of this section), shall be determined by generally accepted accounting procedures which include the following:¶
(a) General Procedures Under Which:¶
(1) Costs which can be identified as direct costs shall be allocated to the product or operation to which such costs apply.¶

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1851.1 Permissible Advertising Allowance.

A distributor may give an advertising allowance on any dairy product classified as Class 2., Class 3, Class 4a, or Class 4b, yogurts, soft fresh cheese (fromage frais), and flavored milks. Advertising allowances on flavored milks may be given until January 1, 1992.

Any such advertising allowance shall be subject to the following provisions:

(a) The distributor offering such advertising allowance shall maintain records that identify the manner in which the offer is made, the particular dairy product on which the allowance is offered, the particular dairy product on which the allowance is offered, the particular period during which the allowance is available, the terms and conditions under which a wholesale customer may qualify for the allowance and the method used to determine the appropriate allowance paid to each individual wholesale customer.

(b) The distributor shall offer such advertising allowance without limitation to all wholesale customers.

(c) Such advertising allowance shall not be directly or indirectly conditioned on a wholesale customer's purchase, handling or sales promotion of any other dairy product as defined in section 61305 of the Code.

(d) Any such advertising allowance on a particular dairy product shall be considered a direct cost to that dairy product in determining compliance with the below cost standards of sections 61383 and 61384 of the Code.

(e) Any such advertising allowance shall apply only to dairy products sold under a distributor's own registered brand.

(f) The cost of any such advertising allowance shall be borne by such distributor.

(g) Except as provided in this section such advertising allowances shall otherwise comply with all the requirements of chapter 1, part 3, division 21 of the Code.

Authority Cited: Sections 407 and 61341, Food and Agricultural Code

Reference: Sections 61377, 61378, and 61441, Food and Agricultural Code

1870.1 Redemption Devices for Retail Sales of Dairy Products.

A distributor or wholesale customer may issue a coupon, premium, certificate or similar device for redemption in connection with the retail sale of dairy products other than those classified as Class 1, except yogurts, fromage frais products and soft fresh cheese products, subject to the following provisions:

(a) A redemption device offered by a distributor shall apply only to dairy products sold under the registered brand of such distributor.

(b) Costs incurred in the issuance and redemption of any redemption device shall be borne by the distributor or wholesale customer who issues such redemption device.

(c) All costs incurred or related, directly or indirectly, to the issuance, handling, and redemption of such premiums, coupons, certificates, or similar devices authorized by section 61375 shall be considered a direct cost to that particular dairy product in determining compliance with the below cost standards of sections 61383 and 61384 of the Code.

(d) Redemption devices allowed under this section shall not be conditioned upon, either directly or indirectly, or in any way redeemable in connection with, the retail sale of any dairy product classified as Class 1, except yogurt.

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Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Sections 61374, 61383, and 61384, Food and Agricultural Code

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1870.2. Redemption Devices for Replacement Dairy Products.

Notwithstanding the provisions of section 1870.1, a distributor or wholesale customer may issue a coupon, premium, certificate, check, or similar device (hereinafter collectively referred to as redemption devices) to an individual consumer to replace a dairy product (including Class 1), under the following conditions:

(a) The issuance of a redemption device for the "replacement" of a dairy product will only be allowed for an individual consumer complaint. The consumer must initiate the complaint by contacting the distributor or wholesale customer either in writing or orally.

(b) The redemption device must permit replacement of the product about which the complaint was made. The cash value of the redemption device may not exceed twice the amount paid by the consumer for the product upon which the complaint was made. The amount paid by the consumer shall be calculated as the unit price of the item at retail, multiplied by the number of units upon which the complaint was based.

(c) The distributor or wholesale customer must maintain a list of items and persons to whom redemption devices were issued for a period of three years.

Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Sections 61375, 61383, 61384, and 61441, Food and Agricultural Code

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1871. Bona Fide Charities.

As used in Section 61375 of the Code, the term "bona fide charities" includes any corporation, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (Note: Based upon Section 17214(b) of the Revenue and Taxation Code of the State of California.)

Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Section 61375, Food and Agricultural Code

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1872. Frozen Dairy Products.

Retail sales or promotions of frozen dairy products, in other than packaged form, in a restaurant are exempt from the unlawful practices provisions of Article 4 of Chapter 1, Part 3, Division 21 of the Code when the cost of such sales or promotions is borne by such restaurant. For the purposes of administration of this exemption, the term "other

than packaged form" shall mean that such frozen dairy products are furnished directly to consumers in a container not intended for use or storage in consumers' homes.

Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Section 61374, Food and Agricultural Code

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1873. Sampling of Milk and Dairy Products.

A distributor or wholesale customer may offer the sampling of milk or dairy products under the following conditions:

(a) (1) For fluid Class 1 products - the product to be sampled must not exceed four (4) fluid ounces.

(2) For Classes 1 (except fluid), 2, 3, 4a and 4b products - the product to be sampled must not exceed two (2) ounces by weight.

(b) The sample must be provided to the consumer in an open container.

(c) A representative of the distributor or wholesale customer must offer the sample.

Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Section 61375, Food and Agricultural Code

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The competitive price being met must be a current price of the competition and shall be not less than the competitor's price.

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In respect to sales by processing distributors of milk, cream or dairy products, the cost of raw product, plus all costs of manufacturing, processing, handling, sale and delivery, including overhead costs within each distribution cost center (as "distribution cost center" is defined in subsection (c) of this section), shall be determined by generally accepted accounting procedures which include the following:

(a) General Procedures Under Which:

(1) Costs which can be identified as direct costs shall be allocated to the product or operation to which such costs apply.

(2) Indirect costs and all costs of a joint nature shall be prorated to all products to which such costs apply.

(b) Detailed procedures under which each of the following costs shall be included, when such costs are incurred:

(1) Cost of product, which shall include all costs of raw products, semi-finished products, and ingredients used in the production or manufacture of milk, cream and dairy products, f.o.b. the processing or manufacturing plant. The cost of raw product of all market milk or the derivatives thereof, used in the manufacture of milk, cream, and dairy products by the producer thereof shall be not less than the applicable minimum prices required to be paid to producers by distributors according to usage pursuant to the applicable stabilization and marketing plan for the area in which the market milk or derivatives thereof are sold or used.

(2) Manufacturing and processing costs, which shall include, but not be limited to, the following: All costs in connection with procurement of product, operation and maintenance of the receiving room, laboratory, separating, pasteurizing, homogenizing, packaging, mix-making, freezing, s

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orage of finished products or any other type of manufacture, including labor, containers including cases, supplies, repairs, taxes, insurance, rentals, depreciation on plant buildings and equipment, and service purchases.

(3) Delivery cost, which shall include, but not be limited to the following: Cost of

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kinds of delivery, including salaries and wages of loaders and checkers, drivers or driver salesmen and route supervisors, depreciation, rent, operational expenses and insurance on delivery equipment, taxes, and other cost associated with the delivery of products.

(4) Selling cost, which shall include, but not be limited to the following: Salaries and expenses of salesmen and sales manager, advertising, customer relations and promotional expenses.

(5) Collection and route overhead cost, which shall include, but not be limited to: Salaries of billing clerks, credit managers and collectors, stationery and supplies, collection expenses and bad debts.

(6) General and administrative cost, which shall include all expenses not charged to raw product, processing, delivery, selling, collection and route overhead; and including, but not limited to, executive and administrative salaries and expenses, home office expense, legal and auditing expense and miscellaneous corporate expenses.

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Records to Be Kept.

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In the event any person neglects, fails, or refuses to submit cost data in accordance with generally accepted accounting principles, as stated above upon said demand by the director

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agent, then proof of cost shall be deemed to be no less than the costs applicable to distributors, as reflected in the results of impartial audits and surveys conducted by the director under the generally accepted accounting procedures defined in this article.

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(c) "Distribution cost center", as used in these regulations, means single processing plant or a single nonprocessing depot supplied from such plant to which all direct and indirect distribution costs are allocated.

(d) The provisions of this article apply equally to distributors who do not process with the exception that invoice or replacement cost, whichever is lower, shall replace the cost factors of raw product, manufacturing and processing. Invoice or replacement cost shall be adjusted to reflect all costs incurred in the acquisition of the particular milk or dairy product and any applicable lawful rebates, discounts or allowances.

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1951. Unacceptable Cost Accounting Procedures.

In respect to sales by distributors of milk, cream or dairy products, the cost of raw product, plus all costs of manufacturing, processing, handling, sale and delivery, including overhead costs, shall not be determined by cost accounting procedures which are not generally accepted cost accounting procedures. Such unacceptable cost accounting procedures shall include, but not be limited to, the following:

(a) By-product costing theories (such as assign no cost to by-product), treating sales of by-products as "other income", by-product cost considered to be revenues derived less cost of disposal, and other reversal costing theories.

(b) Direct costing (or marginal costing) which connotes that only direct material, labor and direct variable overhead are included in the finished product cost.

(c) The differential cost concept, which is the calculation of the unit cost of additional units on the basis of the total extra cost incurred divided by the total number of extra units.

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Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Section 61384, Food and Agricultural Code

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Article 7. Generally Acceptable Cost Accounting Procedures-Retail Sales by Wholesale Customers

1960. Acceptable Cost Accounting Procedures--Retail Sales by Wholesale Customers.

The sale by any wholesale customer of milk or dairy products to a consumer at less than cost is an unlawful practice. Cost as applied to wholesale customers means invoice or replacement cost, whichever is lower, plus the cost of doing business of such wholesale customer. Cost shall be determined by generally accepted cost accounting procedures including the following:

(a) Invoice or replacement cost shall be adjusted to reflect all costs incurred in the acquisition of the particular milk or dairy product and any applicable lawful rebates, discounts or allowances. In the case of a distributor and wholesale customer under single integrated ownership, invoice or replacement cost shall include all procurement, processing and distribution cost incurred in supplying the particular milk or dairy product to the integrated consumer outlet.

(b) Cost of doing business of a wholesale customer is the total operating costs expressed as a percentage of total sales.

(c) If the wholesale customer departmentalizes its operations (grocery, meat, produce, delicatessen, etc.) for costs and sales, or separately accounts for costs and sales associated with handling milk and dairy products, within their regular accounting procedures, such records may be accepted. Departmentalized or separate accounting costs shall be determined in accordance with the following procedures:

(1) Costs which can be identified as direct costs shall be allocated to the product to which such costs apply.

(2) Indirect costs shall be prorated to all products.

(3) All costs of a joint nature shall be prorated to all products to which such costs apply.

(4) The cost determination shall include, but is not limited to, the following expenses:

(A) Labor and salaries including employee benefit costs and payroll taxes.

(B) Occupancy expenses including rent, depreciation, repairs, maintenance and taxes.

(C) Utilities.

(D) Supplies.

(E) Equipment and fixtures including repairs, rental, taxes and depreciation.

(F) Outside services.

(G) General and administrative charges.

(H) Delivery costs.

If no departmentalized or separate accounting records are maintained, then the cost of doing business of such wholesale customer in the sale of milk or dairy products shall be presumed to be the total cost of doing business of such wholesale customer.

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Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Section 61384, Food and Agricultural Code

1961. Availability of Cost Data--Wholesale Customers Selling at Retail.

For the purposes of uniform and impartial enforcement of the below cost standards contained in Section 61384 of the Code, any wholesale customer, upon written demand by the director or his agent, and within 48 hours after receipt of such demand, shall make available to the director cost data developed pursuant to the provisions of this article.

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Authority: Sections 407 and 61341, Food and Agricultural Code

Reference: Section 61442, Food and Agricultural Code